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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 70-341

RONALD DALE TAGGART, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 71-77

DOUGLAS JAMES FARRELL, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 71-77

MARK ALBERT ROY, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 71-290

RANDALL LAWRENCE KILTY, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

SEPTEMBER, 1971 SUPPLEMENT TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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This Supplement is to present to the Court a new, not heretofore available government document to further show,

we now trust conclusively, that the holding of *Ehlert* v. *United States*, 402 U.S. 99, 91 S.Ct. 1319 (1971), should not apply to men like these petitioners, men who, at the time they were ordered to report for induction, were in a no-man's-land posture.

Ehlert said:

> "We are assured, however, by a letter included in the briefs in this case from the General Counsel of the Army to the Department of Justice, that present practice allows presentation of such claims and that there thus exists no possibility that late crystallizers will find themselves without a forum in which to press their claims. *Our conclusion in this case is based upon that assurance.*" 91 S.Ct. 1319, 1324-1325. [Italics supplied]

The following chronology is presented as significant:

1. At all times concerned[1] with *Ehlert* and up to August 20, 1971 the Department of Defense Directive 1300.6 read:

> IV. B2.
>
> A request for discharge after entering military service based solely on conscientious objection which existed but was not claimed prior to induction or enlistment cannot be entertained. Similarly, requests for discharge based solely on conscientious objection claimed and denied by the Selective Service System prior to induction cannot be entertained. This accords with Federal court holdings that a claim to exemption from military service under the Selective Service laws must be interposed prior to notice of induction and failure to make timely claim for exemption constitutes waiver of the right to claim. However, claims based on conscientious objection growing out of experience

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1. Compare *Wright* v. *Selective Service System*, 8 Cir., 1971, 444 F.2d 83, f.2, 84.

prior to entering military service, *but which did not become fixed until entry into the service* will be considered. [Italics supplied]

2. Soon after *Ehlert* was decided the United States Court of Appeals began affirming the convictions (of cases pending on its docket) of *Ehlert*-type appellants.

The first, Taggart (No. 70-341) filed a Petition for a Writ of Certiorari on June 26, 1971, arguing in it (and in his Supplement) that an unbroken line of three dozen cases had dealt with the factual question of armed service procedures and that all held that where a man's conscientious objections had become fixed *before* entering the service his application would be rejected.

Subsequently, the above argument was repeated by others, filing similar petitions (Farrell, No. 71-77, Roy, No. 71-77 and Kilty No. 71-290) and the argument was elaborated as new and more recent (current) evidence of military practice come to light.

3. Then, on August 20, 1970, the Department of Defense amended its directive DoD 1300.6 conforming to the above-related assurance given the Court by the General Counsel of the Army. This amendment now gives a forum to men postured like petitioners were.

Petitioners, at the time they were called upon to submit to induction, had no forum.

Subparagraph IV A 2, the correlative portion of the amendment to former IV B 2 is brand new. Paragraph IV now reads:

Aug 20, 71
1300.6

IV. *POLICY*

A. Administrative discharge prior to the completion of an obligated term of service is discretionary with

the Military Service concerned, based on a judgment of the facts and circumstances in the case. However, insofar as may be consistent with the effectiveness and efficiency of the Military Services, a request for classification as a conscientious objector and relief from or restriction of military duties in consequence thereof will be approved to the extent practicable and equitable within the following limitations:

1. Except as provided in Section IV.A.2. of this Directive, no member of the Armed Forces who possessed conscientious objection beliefs before entering military service is eligible for classification as a Conscientious Objector if

   (a) (1) such beliefs satisfied the requirements for classification as a Conscientious Objector pursuant to Section 6(j) of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456(j)) and other provisions of law, and (2) he failed to request classification as a Conscientious Objector by the Selective Service System; or

   (b) (1) he requested classification as a Conscientious Objector before entering military service, and (2) such request was denied on the merits by the Selective Service System, and (3) his request for classification as a Conscientious Objector is based upon essentially the same grounds, or supported by essentially the same evidence, as the request which was denied by the Selective Service System.

2. Nothing contained in this Directive renders ineligible for classification as a Conscientious Objector a member of the Armed Forces who possessed Conscientious Objector beliefs before entering military service if (a) such beliefs crystalized after receipt of an induction notice; (b) he could not request classification as a Con-

scientious Objector by the Selective Service System because of Selective Service System regulations prohibiting the submission of such requests after receipt of induction notice; and (c) he makes application for classification as a Conscientious Objector within seventy-two (72) hours after his induction.

B. Because of the personal and subjective nature of conscientious objection, the existence, honesty, and sincerity of asserted conscientious objection beliefs cannot be routinely ascertained by applying inflexible objective standards and * * *.

It is submitted that certiorari should be granted.

Respectfully,

J. B. TIETZ
Attorney for Petitioner

September 15, 1971